

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: April 29, 2005

TO : Robert H. Miller, Regional Director
Region 20

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Covenant Aviation Security
Case 20-CA-32378

512-5072-2000

596-0420-5000

This case was submitted for advice as to whether the Employer redistributed an unlawfully overbroad rule prohibiting dissemination by employees of employment practices and employee information to any unauthorized person. We conclude that the maintenance of this rule violated Section 8(a)(1) because employees would reasonably construe it to prohibit Section 7 activity.

FACTS

Covenant Aviation Security employs security screeners at San Francisco International Airport. Employees currently are unrepresented; the United Screeners Association, Local 1 has filed a petition seeking to represent Covenant's employees and an election is scheduled for May 10.

In February 2005, Covenant redistributed its "Policy on Responsible and Ethical Conduct," which it had originally issued in March 2003. Included in this twelve-page document is a provision entitled, "Safeguarding and Use of Information, Documents and Records," which states in part:

Employees ... shall not disclose or discuss any classified documents, security-sensitive information, or "For Official Use Only" information unless specifically authorized to do so. ... Classified information shall not be disclosed to anyone. Employment practices and employee information will only be communicated via the Human Resources Department. Employees shall not:

- a. Divulge any official information obtained through or in connection with their [Covenant] employment to any unauthorized person.

There is no evidence that the Employer either promulgated the policy in response to protected, concerted activity or has applied the policy to protected activity.

ACTION

We conclude that the Employer violated Section 8(a)(1) by maintaining an overbroad confidentiality regulation, which employees would reasonably construe to prohibit Section 7 activity. A work rule, such as a confidentiality provision, is unlawful where its maintenance "would reasonably tend to chill employees in the exercise of their Section 7 rights."¹ The Board has found provisions barring unauthorized disclosure of confidential information to be unlawfully overbroad where the rule bars the disclosure of information concerning employees.² This is because employees could reasonably interpret such a rule as restricting their statutory right to discuss their terms and conditions of employment with each other, as well as union representatives. On its face, Covenant's confidentiality policy prohibits "employees" from disclosing "employment practices and employee information" to "any unauthorized person." We thus conclude that this

¹ Lafayette Park Hotel, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999); Lutheran Heritage Village - Livonia, 343 NLRB No. 75, slip op. at 1-2 (2004).

² See IRIS USA, Inc., 336 NLRB 1013 n.1 (2001) (rule prohibiting disclosure of confidential information "whether about [the company], its customers, suppliers, or employees," held unlawful); University Medical Center, 335 NLRB 1318, 1322 (2001), enf. denied in pertinent part, 335 F.3d 1079 (D.C. Cir. 2003) (rule prohibiting "release or disclosure of confidential information concerning patients or employees," held unlawful); Flamingo Hilton-Laughlin, 330 NLRB 287, 288 n.3 (1999) (rule prohibiting disclosure of "confidential information regarding our customers, fellow employees, or Hotel business," held unlawful).

provision is overbroad and its maintenance within the 10(b) period is unlawful under current Board law.³

B.J.K.

³ This charge is not time-barred under Section 10(b), even though in February 2005 the Employer merely redistributed in unchanged form its March 2003 rule. Control Services, Inc., 305 NLRB 435 n.2, 442 (1991), enfd. mem. 961 F.2d 1568 (3d Cir. 1992) (continued maintenance of facially unlawful rule originally promulgated outside 10(b) period, not time-barred).